

STATE OF NEW YORK
SUPREME COURT: MONTGOMERY COUNTY

VILLAGE OF CANAJOHARIE,

Plaintiff-Petitioners,

- against -

PLANNING BOARD OF THE TOWN OF FLORIDA,
MONTGOMERY COUNTY INDUSTRIAL
DEVELOPMENT AGENCY, MONTGOMERY COUNTY,
NEW YORK STATE ECONOMIC DEVELOPMENT
CORPORATION, AND HERO GROUP, INC.,
BEECH-NUT NUTRITION GROUP,

Defendant-Respondents.

AFFIDAVIT OF
JEFFREY BAKER

MONTGOMERY COUNTY
INDEX NO. 2008-0800

RJI NO. 28-1-2008-0330

HON. FELIX J. CATENA

STATE OF NEW YORK)
) ss.:
COUNTY OF MONTGOMERY)

Jeffrey Baker, being duly sworn, deposes and says that the following statements are true under the penalties of perjury:

1. I am the Deputy Mayor of the Village of Canajoharie, and I make this affidavit in support of a motion for a temporary restraining order, preliminary injunction and permanent injunction.

2. I have resided in the Village of Canajoharie basically all of my life, for 53 of my 54 years.

3. I graduated from Fulton- Montgomery Community College with an Associate's degree.

4. I am currently employed as a boiler inspector for Hartford Steam Boiler Inspection Insurance Co. I am assigned to central New York as my territory, and conduct boiler inspections throughout central New York. As part of my employment, I also perform property surveys and evaluations for the insurance company.

5. I have been Deputy Mayor of the Village of Canajoharie from 1995 to the present time.

6. I was employed in the Beech-Nut baby food processing plant in Canajoharie from April 1976 to June 1992. During the 16 years I worked in the plant, I was assigned to several different areas. The plant encompasses approximately 25 acres in the middle of the Village and includes many different buildings and structures. Prior to leaving in 1992, my last employment position in the plant was as one of two maintenance managers for the entire plant.

7. As a result of my employment in the Beech-Nut plant, my residence in the Village of Canajoharie over the years, and my acquaintance with other employees who live here, I am familiar with the Beech-Nut plant.

8. In June 2006 I was invited to a meeting by Hero/Beech-Nut which I attended at the Albany Marriott Hotel on or about June 21, 2006. I attended the meeting with Mayor Ronald Dievendorf, who was Mayor of the Village of Canajoharie at the time.

9. The purpose of the meeting was to explain Hero/Beech-Nut's plans for improvements in the Beech-Nut baby food processing plant located in Canajoharie.

10. Numerous public officials were present at the meeting including representatives of Assemblyman Paul Tonko, Congressman Michael McNulty, State Senator Hugh Farley, Senator Hillary Clinton, Senator John Schumer, and representatives of government agencies such as the New York State Economic Development Corporation, New York State Department of Agriculture & Markets, New York State Department of Environmental Conservation, New York State Department of Labor, New York State Energy Research and Development Authority, Cornell Cooperative Extension, Montgomery County Economic Development Corporation, and New York State Empire Zones.

11. A presentation was made by Mark Knotts, Vice President of Beech-Nut Operations, and Jeff Heiser, Beech-Nut Plant Manager, concerning Hero/Beech-Nut plans for investment in the existing Canajoharie food processing plant. The representatives of Beech-Nut made a power-point presentation, and gave a narrative about the corporation's plans for improvements for the plant.

12. The proposal conveyed by the presentation was that Beech-Nut would invest \$35 million of its funds in upgrading the existing Canajoharie baby food processing plant, and was requesting \$10 million in assistance from local, state and federal governments during the next three (3) years. The total to be invested in the existing Canajoharie plant was \$45 million, \$35 million of which would be invested by Hero/Beech-Nut and \$10 million of which would come from government.

13. Beech-Nut representatives made a specific proposal about how the \$45 million would be spent to upgrade the existing plant. The proposal called for phased improvements of different parts of the existing plant which would allow production to continue while the plant was being upgraded. The plant improvement project was going to take approximately three (3)

years, and the proposal showed the nature and cost of each of the operational plant investments.

14. The details of the proposal were: a new building is to be constructed to house ten (10) new large capacity automated horizontal retorts, to replace 69 smaller manually operated vertical retorts, which would require an investment of \$15.85 million over 18 months; a new packaging line with a 12 count case packing capacity was to be installed at a cost of \$3.3 million over 12 months; a new plastic jar baby food filling line (Mondini line) was to be installed at a cost of \$2.5 million over 12 months; an automated pre-fill empty jar inspection system, to replace a manual inspection system, would be installed at a cost of \$2.5 million over 12 months; a new automated post-fill jar inspection system with on-line x-ray vision to inspect every jar would be installed at a cost of \$1.6 million over 12 months; a 16 ounce cereal packaging filling line was to be installed at the Fort Plain facility at a cost of \$.54 million over 6 months; equipment and services at the Canajoharie Research and Development (R&D) Pilot Plant facility were to be upgraded, for new product development and enhanced existing product lines, at a cost of \$.32 million over 12 months.

15. All of the improvements to the existing Canajoharie plant were to cost a total of \$45 million, and would be accomplished in a total of three (3) years. I do not have a complete copy of the documents distributed by Hero/Beech-Nut at the meeting, but I am attaching the documents that were distributed and we have retained as Exhibit O.

16. Hero/Beech-Nut requested assistance from city, local, state, and federal sources in the nature of tax relief abatements, training assistance dollars, grants, lower utility charges, no sales taxes, infrastructure improvement abatements, in the amount of \$10 million over the next two to three years.

17. During the course of the meeting, Hero/Beech-Nut representatives repeatedly stated that implementation of the plant upgrade costing \$45 million would allow Beech-Nut to compete favorably in the baby food market in the United States.

18. Beech-Nut repeatedly made statements such as that the project would "Ensure increased sales volume of glass products", result in "Significant technological processing improvement over current system, that will further enhance product quality and safety", "Improve Beech-Nut manufacturing cost structure at Canajoharie to remain not only in the baby food category but competitive in the industry is well. Savings to be realized through labor, energy and product quality." Beech-Nut also represented that the improvements would result in "currently increasing and future anticipated sales volume", and "expanding sales", and would "Improve Beech-Nut manufacturing cost structure at Canajoharie. Savings to be realized through labor and productivity improvements that will result from expanding sales."

19. The Village and its officials agreed to back Hero/Beech-Nut's plan to renovate and re-use the existing baby food processing plant in Canajoharie in the belief that the upgrades proposed by the company would fulfill all of Beech-Nut's objectives for a new modern plant. Representatives of political leaders and state agencies also endorsed Beech-Nut's program to improve the existing plant.

20. The environmental impact statement (EIS) and findings statement by the lead agency, as well as the findings statement by the other involved agencies, should have considered the option of upgrading the existing Beech-Nut baby food processing plant in the Village of Canajoharie as an alternative to construction of a new plant at a cost of \$134.9 million dollars [see Petition, Exhibit N].

21. Hero/Beech-Nut itself has demonstrated that renovation and re-use of the existing plant in the Village is a feasible and realistic alternative to construction of a new plant. The \$45 million cost of upgrading and improving the existing plant is only one third the cost of constructing a new plant at a cost of \$134.9 million, a difference of \$90 million.

22. Although the flood in 2006 may have added some costs to upgrading the existing plant, after the flood Beech-Nut indicated that state grants in the amount of \$3.5 million were sufficient to cover repairs caused by flood damage. Beech-Nut accepted the \$3.5 million for repairs from the state, and the existing plant is now fully operational with immediate plans to expand baby food production in the plant this fall.

23. The EIS and findings statement failed to take a hard look at the alternative of upgrading and re-using the existing baby food processing plant in the Village. The difference between upgrading the existing plant and construction of a new plant is \$90 million. There was no comparative analysis of the environmental impacts of the re-use alternative in sufficient detail to make an intelligent decision about which alternative minimizes adverse environmental impacts while still achieving the goals of Beech-Nut.

24. During consideration of the proposal to relocate the Beech-Nut plant, there are a number of environmental problems with the existing Beech-Nut plant which should have been addressed in the environmental review process. These problems will exist whether Beech-Nut finds new purchaser or tenants for the plant, or whether the buildings will be abandoned as has occurred in industrial plants in Amsterdam, Johnstown-Gloversville, and Schenectady.

25. In the late 1960s Beech-Nut abandoned two large underground fuel tanks. Each tank held 10,000 to 20,000 gallons

of #6 fuel oil. The tanks are located adjacent to the Methodist Church in the Village, north of Route 58 and approximately 25 feet north of the Canajoharie Creek. In the late 1970s and early 1980s, the two tanks were excavated, the tops of the tanks were pried open with machinery, and the tanks were filled with sand. However, #6 oil seeped into the Canajoharie Creek. In the late 1980s or early 1990s, the two tanks were removed and contaminated soil underneath the tanks was removed to an off-site disposal area. The New York State Department of Environmental Conservation and Beech-Nut installed monitoring wells between the location of the tanks and the creek.

26. During 1976 until at least 1992 waste oil was stored in barrels outside the 4 truck repair shop, also known as the old battery shop. The 4 truck repair shop was located north of the packaging and labeling line. The waste oil was collected from changing oil for trucks and placed in barrels that were stored out of doors in the back. The barrels became rusty and deteriorated, and there were leaks and spills from the barrels. The barrels were not stored on an impermeable pad. When the barrels were eventually removed sometime after 1992, no testing of soil and groundwater contamination was performed.

27. In the early 1980s it was discovered that transformers containing PCBs located in the back of the boiler room were leaking onto a concrete pad. The PCB laden oil was pumped out of the transformers, and the PCB laden oil and transformers were disposed of off-site, however the PCBs were not removed from the old concrete or from the crushed stone under the pad. Nor was any testing performed to determine the extent to which PCBs had leaked onto or under the pad. A new concrete floor was poured over the old pad. The back of the boiler room is located within 10 feet of the banks of the Canajoharie Creek.

28. Beech-Nut abandoned the former building 9, also known as the old gum building, or "south yard", and over the years the

building deteriorated. Eventually in approximately 1999 or 2000 the Village of Canajoharie purchased the building from Beech-Nut for \$1.00, and the Village Board demolished the building and converted it into a parking lot, which is located near the Methodist Church. Building 9 had an ammonia system oil accumulator in the basement that caused contamination in the basement. Anhydrous ammonia is a toxic chemical used as a refrigerant in food processing. Equipment located in the basement is used to circulate the anhydrous ammonia. The system accumulator was lubricated with oil, and the accumulator leaked oil mixed with ammonia onto the concrete floor and ground in the basement. When building 9 was demolished for the parking lot, the Village paid approximately \$80,000.00 to clean up the oil from the soil and for other abatement measures.

29. All the buildings in the existing Beech-Nut plant complex located on the west side of the Canajoharie Creek continue to use an anhydrous ammonia system for cooling and freezing fruits, meats and vegetables during baby food processing. Cooling in the buildings on the west side of the creek was achieved using an ammonia system. Each of these systems has an accumulator, and no testing has been performed where the accumulators are located.

30. For decades chemicals from the research and development lab (R&D lab) building on the west side of the creek were placed in barrels. The chemicals included bromides, ethers and alcohol that were waste products from the lab that could not be mixed with fuel oil and burned in the boilers. During the 1970s and 1980s the barrels of waste chemicals were removed and buried in a small private landfill operated by C. J. Burgess. The location where the barrels of chemical waste were buried is now operated by Ron Allen Trucking, and is approximately one (1) mile east of Canajoharie.

31. The retort processing area located on the west side of the Canajoharie Creek, contained many retorts. Retorts are large steel containers used for cooking baby food under high pressure in the final stage of the production process. The retorts were covered with asbestos in order to retain heat. During the mid 1980s the asbestos was removed from the retorts under a contract with Burgess. Asbestos is prevalent throughout all the remaining buildings in the Beech-Nut plant. Asbestos remains in almost every building, in pipes, elbows, joints, condensate retainer tanks, hot water tanks, boilers, headers, and other locations throughout the buildings. Maintenance workers began to receive training in identifying and repairing friable asbestos beginning in approximately 1986 into the 1990s, but, except for retorts, the plant has never undergone a complete asbestos removal and abatement program.


32. Beech-Nut has not performed any site assessment or evaluation of the nature and extent of the contamination that exists in the plant buildings, and no feasibility studies, remediation plans, or any other planning or removal of contamination from plant buildings or the facility property have been performed or costed out. If Beech-Nut will move forward to a proposed new plant in the Town of Florida Industrial Park, these feasibility studies should have been performed as part of the environmental decision making whether the plant should be relocated.

33. The experiences of the carpet mills in Amsterdam, the leather factories in Johnstown-Gloversville, GE in Schenectady, and other former industrial sites indicates that when an industry leaves, the physical plants remain vacant and unoccupied and rapidly deteriorate. Once they deteriorate, it becomes unlikely that they will be purchased, leased or renovated. The buildings go from being eyesores to becoming a danger to the community and risk to the public health and safety, and then they must be demolished frequently at public

expense. As buildings are deteriorating and being torn down, the corporate owners apply for a real property tax reductions and/or attempt to donate the buildings to the municipality, which also takes the property off the tax rolls.

34. Beech-Nut should have taken a hard look at reuse and redevelopment of the existing baby food processing plant in the Village of Canajoharie during the environmental service process to relocate to the Florida Industrial Park, Beech-Nut should have taken a hard look at the environmental impacts of cleanup of the existing plant rather than attempting to sweep this issue under the rug.

DATED: Albany, New York
September 5, 2008


JEFFREY BAKER

Sworn to before me this
5th day of September 2008


NOTARY PUBLIC

GAIL S. COPPERNOLL
Notary Public for New York
No. 01CO5070174
Qualified in Montgomery Co.
Commission expires Dec. 9, 2010